



Comptroller General  
of the United States

Washington, D.C. 20548

Kuppert

## Decision

**Matter of:** Adrian Supply Company

**File:** B-239681

**Date:** August 28, 1990

Bob Stormberg, for the protester.  
Col. Herman A. Peguese, and Capt. W. Trent Fox, Jr., Esq.,  
Department of the Air Force, for the agency.  
George Ruppert, Esq., and John M. Melody, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

Post-bid-opening letter changing manufacturer specified in  
bid does not render bid nonresponsive since information  
concerning intended manufacturer was provided under Place  
of Performance Clause and related to responsibility, not  
responsiveness, and therefore could be changed before award.

### DECISION

Adrian Supply Company protests the award of a contract to  
Industrial Electric Supply Company (IES) under invitation  
for bids (IFB) No. F40650-90-B-0017, issued by the Air Force  
for three high voltage circuit breakers. Adrian principally  
contends that IES' bid is nonresponsive because the bid as  
submitted was not based on IES' intent to comply with all  
material terms of the solicitation, including a specifica-  
tion which requires a pneumatic operating mechanism.

We deny the protest.<sup>1/</sup>

<sup>1/</sup> The agency argues that Adrian's protest is untimely  
because the firm failed to seek relevant information until  
8 weeks after bid opening. We find that the protest is  
timely. Our Bid Protest Regulations require that protests  
be filed within 10 days after the basis of protest is known  
or should have been known. 4 C.F.R. § 21.2(a)(2) (1990).  
Adrian's protest against the award to IES was filed on  
May 15, which was within 10 days after Adrian's May 9  
notification of the award to IES. Adrian was not required  
to protest before the allegedly improper award was made.  
See Tamper Corp., B-235376.2, July 25, 1989, 89-2 CPD ¶ 79.

049315/ 142099

## BACKGROUND

The solicitation included specification paragraph 3.2.1, which requires the circuit breakers to have "pneumatic trip-free operation." The solicitation did not require descriptive literature or any other information to be submitted with the bid other than price, delivery, representations and certifications. Three bids were received, but the low bid submitted by Nu-lite Electrical Wholesalers, Inc. was rejected as nonresponsive. The second-low bid, for \$250,526, was submitted by IES and was determined responsive. The third and high bid, for \$305,200, was submitted by Adrian. Subsequently, in a post-bid-opening letter, IES informed the agency that the manufacturer named in the Place of Performance Clause (Federal Acquisition Regulation § 52.214-14 (FAC 84-53)) in its bid only offered units utilizing a spring mechanism, rather than the required pneumatic mechanism. IES advised that it therefore had located another source which supplies pneumatic operated units, and that it was changing its manufacturer. Award was made to IES on May 8 and Adrian filed its protest here on May 15.

## RESPONSIVENESS

Adrian contends that IES' bid is nonresponsive because IES' bid as submitted clearly was not based on furnishing items meeting the pneumatic mechanism requirement, as evidenced by IES' own admission; IES' post-bid-opening letter admitted that the manufacturer named in its bid offered a spring operating mechanism rather than the required pneumatic operating mechanism.

To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Only where a bidder provides information with its bid that reduces, limits, or modifies a solicitation requirement may the bid be rejected as nonresponsive. Oscar Vision Sys., Inc., B-232289, Nov. 7, 1988, 88-2 CPD ¶ 450. Responsibility, on the other hand, refers to a bidder's apparent ability and capacity to perform all contract requirements and is determined not at bid opening but at any time prior to award based on any information received by the agency up to that time. See Montgomery Elevator Co., B-220655, Jan. 28, 1986, 86-1 CPD ¶ 98. Information concerning a bidder's responsibility generally may be provided or changed any time prior to award. See Norfolk Dredging Co., B-229572.2, Jan. 22, 1988, 88-1 CPD ¶ 62.

IES' bid was responsive. The solicitation required only that bidders agree to furnish circuit breakers which conformed to the specifications. IES' bid did this and took no exception to any solicitation requirements. Thus, notwithstanding that IES named a manufacturer that could not itself produce items meeting the pneumatic mechanism requirement, IES' bid bound the firm to furnish items meeting this and all other requirements. See Southern Ambulance Builders, Inc., B-236615, Oct. 26, 1989, 89-2 CPD ¶ 385. Where a bidder designates a manufacturer in its bid that does not make a product meeting the solicitation's specifications, and the designation of the manufacturer is for a purpose which concerns the bidder's responsibility, the bid nevertheless is responsive so long as it does not otherwise take exception to the solicitation. See Western Roofing Serv., B-234314.2, May 22, 1989, 89-1 CPD ¶ 486.

Here, the information relating to IES' intended manufacturer was provided only in the Place of Performance Clause, which relates solely to the firm's responsibility. See John Short & Assocs., Inc.; Comprehensive Health Servs., Inc., B-236266; B-236266.4, Nov. 9, 1989, 89-2 CPD ¶ 448. As indicated above, information concerning a firm's responsibility may be submitted any time prior to award. Thus, the fact that IES changed its manufacturer after bid opening did not render the firm ineligible for award.

#### MISTAKE

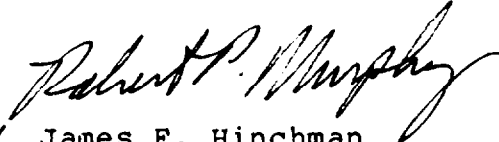
Adrian contends that the agency improperly allowed IES to correct a mistake in its bid by changing its manufacturer after bid opening; in effect, the agency allegedly permitted correction of the bid to make it responsive. Adrian also argues that correction in this manner was improper because there was no evidence that IES intended to base its bid on the substitute manufacturer.

Adrian's characterization of IES' change of its intended manufacturer as constituting correction of a mistake in bid is incorrect. Again, this information relates to the responsibility of the bidder; it is not related to a mistake in bid. See Federal Acquisition Regulation (FAR) § 14.406; Western Roofing Serv., B-234314.2, *supra*. Thus, while Adrian is right that a nonresponsive bid cannot be corrected to make it responsive, that is not what happened here.

## DISCUSSIONS

Adrian contends that the agency's communications with IES after bid opening concerning its intended manufacturer and the characteristics of the items it would furnish constituted negotiations, which are improper in a sealed bid procurement. However, there is no prohibition against an agency communicating with a bidder after bid opening concerning issues relating to the firm's responsibility, the case here. See A.B. Dick Co., B-233142, Jan. 31, 1989, 89-1 CPD ¶ 106.

The protest is denied.

  
for James F. Hinchman  
General Counsel